

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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JEFFREY ROTH,

Plaintiff,  
v.

**13-CV-901A(F)**

2810026 CANADA LIMITED LTD.,  
2810034 CANADA LIMITED,  
FREDERICK GROUP INC.,  
SINGH AMARJIT,

Defendants  
Third-Party Plaintiffs,  
v.

**ORDER**

PAMELA J. BAUMAN,

Third-Party Defendant.

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PAMELA BAUMAN,

Plaintiff,  
v.

**15-CV-374A(F)**

2810026 CANADA LIMITED,  
2810034 CANADA LIMITED,  
FREDERICK GROUP INC.,  
SINGH AMARJIT,

Defendants

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APPEARANCES: DAVID W. POLAK, ESQ.  
Attorney for Plaintiffs  
3686 Seneca Street  
West Seneca, New York 14224

WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP  
Attorneys for Defendants  
BEATA SHAPIRO, of Counsel  
260 Franklin Street, 14<sup>th</sup> Floor  
Boston, Massachusetts 02110

FELDMAN KIEFFER, LLP  
Attorney for Third-Party Defendant  
ADAM C. FERRANDINO, of Counsel  
110 Pearl Street, Suite 400  
Buffalo, New York 14202

By Order entered January 26, 2016 (Dkt. 22), Plaintiff was directed to show cause, not later than February 26, 2016, why reasonable expenses, including attorneys fees, incurred by Defendants in connection with the prosecution of Defendants' motion to compel (Dkt. 19) ("Defendants' motion"), should not, pursuant to Fed.R.Civ.P. 37(a)(5) ("Rule 37(a)(5)") be granted by the court during oral argument on Defendants' motion, should not be awarded ("the January 26, 2016 Order"). To date, Plaintiff has failed to comply with the January 26, 2016 Order. Accordingly, pursuant to Rule 37(a)(5), the court finds that Plaintiff's failure to provide the discovery sought by Defendants' motion and as directed by the court was not based on a genuine dispute or substantially justified, and that such an award would not, under the circumstances, be unjust. The court further finds that as there is nothing in the record indicating Plaintiffs' failure to produce the requested discovery was caused by Plaintiff, the court allocates the payment of such award solely against Plaintiff's counsel.

Defendants' affidavit of expenses based on contemporaneous time and billing records together with Defendants' attorneys regular hourly billing rates shall be filed not later than October 31, 2016; Plaintiff's opposition, if any, shall be filed within 10 days thereafter; Defendants' reply shall be filed within 5 days thereafter. Oral argument shall be at the court's discretion.

SO ORDERED.

*/s/ Leslie G. Foschio*

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LESLIE G. FOSCHIO  
UNITED STATES MAGISTRATE JUDGE

Dated: October 17, 2016  
Buffalo, New York